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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/982,635

10/18/2001

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MAC0002.US

8588

7590

05/09/2005

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EXAMINER

ROWAN, KURT C

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

**Application No.**

09/982,635

**Applicant(s)**

MAGUIRE ET AL.

**Examiner**

Kurt Rowan

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>April 9, 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1, 3-20 of this application conflict with claims 1-2, 4-10, 12-19 of Application No. 10/196,615. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, 8-13, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bahn in view of Patterson for substantially the same reasons stated in the last Office Action.

The patents to Bahn and Peterson show fishing rods and have been discussed in the last Office Action. Bahn shows a fishing pole 1, having a first flexibility, with line guides 4, 8 mounted on an external surface of the pole. Bahn shows a fishing line containment apparatus 9 mounted through at least two line guides. Bahn shows an elongated tube 9 with a second flexibility but does not disclose that the second flexibility is greater than

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the first flexibility. The patent to Patterson shows a fishing pole 1 with a plurality of line guides 4 that has a first flexibility. Patterson shows two captivating devices 10, 11. The captivating devices are inherently removable. The solder coating that forms the captivating devices may be merely remelted to removed. The solder coating could be replaced with a new solder coating due to wear, rust or other damage. Further, Bahn shows a captivating device 21 In Fig. 4 that is removable. Bahn shows a flared opening on the other end of the tube 9 towards the reel as shown in Fig. 1 that acts as a captivating device. Patterson shows a fishing line containment apparatus 5 with an elongate tube 6, made from a spring, having a second flexibility. As shown in Fig. 1, from the amount of deflection of the rod 1 compared to the deflection of the elongate tube 6, it is clear that the elongate tube has a greater flexibility than that of the rod 1. In reference to claims 1, 10, and 18, it would have been obvious to provide Bahn with an elongate tube as shown by Patterson since merely one elongate tube is being substituted for another and the function is the same. Providing Bahn with the elongate tube shown by Patterson would provide an adjustable tube as disclosed by Patterson in column 2, line 44 to column 3, line 3. A reason to make the captivating devices removable is to be able to replace them when they wear out since they are abraded by fishing line passing through the line containment apparatus or are damaged. Bahn shows two line guides (and probably has more since most rods have four to five), but it would have been obvious to employ for multiplied effect. See *In re Harza*, 124 USPQ 378. In reference to claims 3 and 11, Patterson shows a flexible tube. In reference to claims 4 and 12, Patterson shows the elongate tube being made from metal. In

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reference to claims 5 and 13, Patterson shows a coiled spring. In reference to claim 8, 16, 19, Bahn shows a lead line 14. In reference to claims 9 and 17, Bahn discloses a fishing reel but does not show the line containment apparatus extending to the reel. However, it would have been obvious to extend the tube to the reel since changes in size are obvious. See *In re Rose*, 105 USPQ 137. Further, extending the tube to the reel would prevent line tangles. In reference to claim 20, Bahn shows the elongate tube positioned along side the exterior surface of the fishing rod. It is not clear why applicant has not recited that the line containment device extends between three line guides one of them being the tip, with the middle line guide being on the outer surface of the line containment tube and supporting the tube and that the captivating devices are both in the same plane as the line containment tube and threaded into the line containment tube.

3. Claims 6-7 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bahn in view of Patterson as applied to claims 1 and 10 above, and further in view of Tsurufuji.

The patents to Bahn and Patterson show fishing rods with elongate tubes mounted on the rods as discussed above. Patterson shows line-captivating devices, but does not disclose annular rings on an exterior surface. The patent to Tsurufuji shows a fishing rod having a two captivating devices 16, 24, each comprising a ferrule. Tsurufuji shows annular rings in Fig. 2 on the exterior surface and having a shoulder HG for annular ring 24 and a shoulder G9 for annular ring 16. In reference to claims 6 and 14, it would have been obvious to provide the fishing rod of Bahn as modified by Patterson with

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captivating devices as shown by Tsurufuji since merely one captivating device is being substituted for another and the function is the same. In reference to claims 7 and 15, Tsurufuji shows the diameter of the shoulder to be somewhat greater than the diameter of line guides G1, G2. The greater diameter of the ferrule shoulder would reduce wear on the fishing line.

### ***Response to Arguments***

3. Applicant's arguments filed December 23, 2004 have been fully considered but they are not persuasive. In regard to claims 1, 10, 18, Applicant argues that flexible tube of Patterson extends not between two fishing line guides but from a rigid tube. In response to applicant's arguments against the references of Patterson and Bahn individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant argues that the captivating devices 10, 11 of Patterson would destroy the device. Removing the captivating devices of Patterson by heat would destroy the devices assuming that the job was done correctly, but the claims merely recite that the captivating devices are removable and the captivating devices could be reconstituted with more solder. Of course part of the elongated tube could also be removed with the end caps 10, 11 mounted thereon by cutting the coil of the flexible tube 6 and then reattaching at a late time. Also, the solder that is used to join the captivating devices can be scraped-off. Applicant should recite the structure that makes the captivating devices of the present invention different than that of the prior art.

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Applicant's devices use threads that presumably mate to corresponding threads in the elongate tube and that the captivating device begins and ends at a line guide. This is not shown by Patterson or Bahn. It is not seen that providing Bahn with a flexible tube such as shown by Patterson would be contrary to the stated purpose of Bahn. The line guide would be maintained in parallel relationship depending on the forces involved and would also remain in the same plane, that this the plane of the paper which vertically passes through the rod and line guide from top to bottom. The examiner has contemplated the stated advantages of the present invention. In reference to claim 10, Bahn, shows an elongate tube that extends between two line guides 4, 9,10 on a fishing pole. The captivating devices 10, 11 of Patterson can be interpreted to captivate a fishing line.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR